

**MINISTRY OF AGRICULTURE LIVESTOCK, FISHERIES AND  
IRRIGATION**

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**REGULATORY IMPACT STATEMENT (RIS)**

**THE CROPS (IRISH POTATO) REGULATIONS, 2018**

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## **Introduction**

The Regulatory Impact Statement for the proposed Crops (Irish Potato Regulations), 2018 was prepared in accordance with the provisions of sections 6 and 7 (1) and (2) of the Statutory Instrument Act, 2013. Section 6 of the Act requires the regulatory making Authority to prepare a regulatory impact statement for the proposed regulations indicating the costs and benefits of the proposed regulations on the public and stakeholders. Section 7(1) and (2) of the Act set out the contents of a regulatory impact statement for the proposed regulations as follows:

### **1.0 A Statement of the Objectives and Reasons for the Proposed Regulations**

The regulatory instrument is a guide for the development, promotion and regulation of the Irish Potato sub-sector. With regards to Article 1(3) of the Constitution and Section 40 of the Crops Act no. 16 of 2013, the regulations seek to fill various loopholes in the Irish Potato industry through the following objectives:

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- I. Registration of growers, grower associations, dealers and Irish potato collection centres;
- II. Registration of processors, warehouses, importers and exporters of Irish potatoes;
- III. Quality assurance and marketing of Irish potatoes;
- IV. Establishment and enforcement of standards in grading, sampling and inspection, tests and analysis, specifications, units of measurement, code of practice and packaging, preservation, conservation and transportation of crops to ensure health and proper trading;
- V. Packaging and sale of Irish potatoes; and
- VI. Promotion of best practices in the Irish potato sector.

### **2.0 Statement on the Effect of the Proposed Regulations**

#### **2.1 Effects on the Public Sector**

- I. The Government will, for the first time, establish a coordinated Irish Potato Value chain with effective oversight and better management;
- II. County Governments will have both the regulation document and its implementation strategy as a reference point for direct interventions at county level, especially the mobilization and providing agricultural advisory services to the farmers, and promoting sector development in potato growing counties, and regulation of the industry at the county level;

- III. The key stakeholders in the Irish potato sector will have well developed structures in the sector for effective participation in the sector and informed planning under the AFA - Food Directorate.

## **2.2 Effects on the Private Sector**

- I. Farmers: Majority of the farmers (63%) sell their crop directly off the farm. The remaining 27% is mostly stored for seed and home consumption. The farmers use wooden or earthen granaries to store small quantities of the crop. The lack of appropriate storage facilities therefore leads to potato glut during the harvesting seasons and subsequently a drop of farm gate prices to almost 50%. Farmers will be facilitated to aggregate, and this may lead to investment in the cold storage facilities.
- II. Potato Warehouse Owners: Various value chain actors in the storage node promoting potato storage facilities will now have the motivation to expand.
- III. Marketers: Previous studies indicate that 80% of the total potato production in Kenya is sold via local markets or traders while farmers use 20% of the production to consume at home and a small amount, estimated 1 to 2% at most is processed into French fries (chips) or potato chips (crisps) by processors. The quality of potatoes marketed will improve because of implementation of standards in production, sorting grading, packaging and transportation. This may lead to opening up of external markets that will reduce import bills and generate foreign exchange for the country.
- IV. Packaging: The packing of potatoes has continued to be a contentious issue that has limited farmers' profitability of the enterprise. In the absence of standardized maximum weights and use of weighing scales, middlemen have developed a tendency to enlarge the gunny bag sizes but kept the prices per bag steady. The gunny bags are usually provided by the buyers who pack them in extended bags weighing close to 200kgs. The proposed standardized packaging will lead to proper handling of produce that will ensure quality, gender friendly packaging that will create employment and improved health of the loaders. Additionally, use of weighing scales in selling of produce will ensure value for money for the consumers and equitable distribution of benefits in the value chain.
- V. Processors: Will access adequate and high-quality amounts for processing.
- VI. Seed potato multipliers: Enhanced acreage under Irish potatoes will create demand for certified potato seed.
- VII. Importers: An orderly subsector will lead to more investments in the introduction and development of appropriate seed varieties for improved

production. This will reverse the trend of importation of frozen chips for processing. Use of high quality locally produced Irish potatoes will be more cost effective and profitable.

- VIII. Traceability: The regulations will facilitate the development of a traceability system for the Irish potatoes which will lead to improved food safety, reduction in imports and increase in exports of the Irish potatoes.

### **2.3 Effects on fundamental rights and freedoms**

- I. The proposed regulations were benchmarked against the Bill of Rights in the Constitution and they do not impact negatively on the fundamental rights and freedoms contained therein.
- II. The proposed regulations will engender fundamental rights and freedoms of players in the Irish Potato value chain. They will for instance secure the rights of growers; processors; importers; and exporters of Irish potatoes by establishing clear procedures, guidelines and conditions for registration. The regulations will establish units of measurements to ensure health and proper trading and create wealth and employment for more Kenyans in the rural areas. This would contribute to improved household incomes and enhance capacities to afford an adequate standard of living envisaged in article 43 of the Constitution.
- III. Further, the proposed regulations seek to advance the government policy of implementing reforms in the Irish potato sub-sector aimed at achieving the national goals set out in the Kenya Vision 2030 whereby the agricultural sector shall be a key driver of economic growth and value addition. The regulations will not only enhance participation of the players in the sub-sector but also enhance consumer protection in the Irish Potato sub-sector by ensuring quality and safe products in the market to fulfill the requirement of Article 46 of the Constitution.

### **3.0 Statement on Regulatory & Non-Regulatory Options**

#### **3.1 Option 1: Maintaining the Status Quo**

Retaining the current regulatory status will have undesirable outcomes. For instance, in the longer term, this option means that the sector must continue to operate under outdated and uncoordinated legislation. Ultimately, this could place the Irish Potato industry at a competitive disadvantage when selling products into the global market place.

### 3.2 Option 2: Passing the Regulations

Upon review of several Government documents including Agricultural Sector Development Strategy 2010-2020, the National Root and Tuber Crops Policy (2010), the Seed Potato Strategy (2009) and the Seed Potato Sub-Sector Master Plan 2009-2014, as well as legal notices on potatoes, it's evident that there are several gaps that the proposed regulations have now addressed. The regulations therefore strengthen the institutional, legal and regulatory framework in the potato value chain as follows:

- I. Registration of farmers and growers will lead to farmers belonging to groups thus streamlining coordination of players, creating the required economies of scale to sustain bargaining power within the subsector. This will remove the negative impact of cartels of middlemen that exploit farmers.
- II. Registration of grower associations will support increased participation of a more effective private sector as opposed to current PPP initiatives allowing new investments in potato aggregation and processing.
- III. The quality control article of the regulation will enhance access to certified potato seed that will meet the demand for increased yields, specialized seed for processing type potato hitherto imported as well as demand for expansion of crop area. The ensuing predictability of the potato seed market will attract more players that will see improved affordability of the seed in the long run. Since seed alone accounts for over 50% of cost of production, any reduction in cost of quality seed will translate to higher incomes to farmers and chain players.
- IV. Currently there are no legal instruments relevant to the Irish Potato industry. For example, the application of Legal Notices No. 44 (GoK 2005) and No. 113 (GoK 2008) is hampered by the lack of a clear strategy between the MoALFI, the Administration and the County Governments. These notices stipulate several standards targeted to different players as efforts by the Government of Kenya to address price disparity in the Irish Potato Industry, encompassing production, marketing and processing. The regulations indicate that, among other things, ware potato should only be packaged in a sisal or jute bag while the size of these bags should not exceed 110 kg. In 2008, the Government of Kenya interpreted the Legal Notice No 44 of 2005 for adoption by the defunct councils in the markets, by establishing Legal Notice No. 113 of 2008 (GOK, 2008). This legal notice empowered the councils to enforce the regulation of ware potato packaging size and weight.
- V. The Potato Produce and Marketing Bill 2014 that was gazetted on 30<sup>th</sup> May that year, especially Part II-6 Functions of the council had not been effectively

addressed. These regulations, upon implementation, will chart a clear path and expounds on the approach that would reinvigorate the sector.

- VI. The regulations have proposed effective inspection and timely and mandatory records along the Irish Potato Value chain. This will lead to development and maintenance of realistic data for the sub-sector for traceability and better planning.
- VII. They also facilitate increased coordinated research and improved extension services to growers for increased production and improved quality
  - I. The proposed Regulations will afford additional protection to workers through the update or removal of outdated provisions, and the inclusion of new provisions to reflect the constraints associated with modern potato farming systems and marketing the implementation of the proposed Regulations will require a phased-out investment strategy spanning an implementation period agreed by AFA in consultation with stakeholders:
    - a) A National Stakeholder Sensitization Program.
    - b) Elaborate training of staff on enforcement of the regulations
    - c) Up scaling enforcement and control measures That may involve establishment of a section specifically for that within the Directorate. This will involve additional staff and /or design a mechanism to involve stakeholders with a similar objective.
    - d) Building infrastructure and capacity for the then established enforcement section.

### **3.3 Option 3: Other Practical Options**

Alternatives to regulation include information and education, market-based structures, self-regulation and co-regulation. In addition, existing policies can be improved, without further regulation, using techniques such as behavioral insight or changing enforcement practices to improve compliance. Such approaches may be better or worse for business and the economy than an equivalent regulatory measure.

#### **Alternatives to regulation**

The alternatives to regulation include:

- I. **Information and education:** Information and education can be used to empower stakeholders to make their own decisions, improving choice for mutual benefit of all. There are potential risks associated with this. Information and education can take time to make an impact. Access to information and the ability to use it can vary within a community and so

may not reach all equally. It may also not be straightforward to assess how people will react or change their behaviour in response to the information provided and it will increase costs for government and businesses that will be providing the information and education required.

- II. **Incentive/market-based structures:** The government can use economic instruments, such as taxes, subsidies, quotas and permits, vouchers etc. as initiatives to realize the desired objectives. These initiatives however are only practically possible in well-developed and efficiently functioning sectors which have well defined structures unlike the Irish Potato sector. Further, often these sorts of systems need their own regulations to establish the framework and may have additional costs to the government.
- III. **Self-regulation:** An industry or a profession can self-regulate, for example by codes of conduct, customer charters, standards or accreditation. In many cases rules and codes of conduct will be formulated by other industry representative or organization under their own initiative
- IV. **Co-regulation:** Co-regulation is an intermediate step between state-imposed and self-regulation that involves some degree of explicit government involvement where industry may work with government to develop a code of practice and enforcement would be by the industry or a professional organization and accredited by government.

#### **4.0 Costs-Benefit Analysis (CBA)**

The implementation of policies and regulatory frameworks comes with gains and losses as well as benefits and penalties. Whereas the losses and penalties can be summed up as costs or inputs, the gains and benefits are summed up as outputs or products. All these occur over a span of time calling the capture of this stream of costs and products over time.

#### **4.1 Economic, Environmental and Social Impact**

##### **Economic impact of the regulations will include:**

- I. Raise the national per hectare average yield of Irish Potato from the current average of 7 tons per hectare against the global average of 17 tons will be the major economic cost fueled by increased demand for appropriate seed and inputs.
- II. Increased savings and Investment by farm families will be a major benefit

- III. Foreign Direct Investment through new investments in production, warehousing/processing and marketing of potatoes –The returns will outweigh the initial costs
- IV. Improved Terms of trade - increased local production taking a share of the imported frozen French fry potatoes is a major benefit on balance of payments for the nation.

**The social impact of the regulations will include:**

- I. Decreased poverty level among the farm families and the community in general.
- II. Improved income distribution among the farm families and the community in general is a major benefit .
- III. Improved access to social amenities among the small growers as spin-off from investment along the chain.
- IV. There will be a cost to sustain this improved health status of the farm families and the community resulting to the challenge of fertilizer and pesticides use in potato growing areas. This cost is in terms of improved education campaigns on best practices that will be considered in the option picked.

**The environmental impact of the regulations will include:**

- I. The challenge of land conservation, utilization and management will be a cost for the regulations that can easily balance out with Improved access to clean affordable water by the households.
- II. However, deforestation could pose slight negative cost impact as more land is opened for potato expansion.
- III. Soil degradation due to improved plant cover and reduced soil operations is a neutral cost impact.
- IV. The improved quality of produce offloaded to the markets will reduce pressure on waste disposal of spoilt produce.

**4.2 Administration and Compliance Cost**

- I. Administration and ensuring compliance to legislation is not costly bearing in mind the inherent structure already in place under the MoALF&I that cascades to the county level and these regulations describes the roles at each level. Besides, implementation and compliance with the regulations will generate income from registration fees of farmers, importers and exporters. As such the regulatory framework is self-sustaining.

- II. On the part of farmers, increased production of Irish potatoes as well as increased quality of produce by far outweighs the initial cost that may be incurred by farmers in complying with the regulations.
- III. There will be additional cost in training staff in related institutions including County governments for harmony of implementation. The benefit would be reduced costs due to joint training budgets.

#### **4.3 Assessment of Return on Investment (Benefit)**

- I. Investment in the Irish Potato value chain is both an important tool of strategy to build competitive advantage of the Kenyan chain and a significant commitment of financial resources for its achievement.
- II. Besides increasing food security and quality assurance and traceability of the potato, the implementation of the regulations will also generate direct levies and fees that will accrue to national and county governments through licensing.
- III. The regulations will spur investment in the potato value chain, thereby raking in venture capital.
- IV. International franchises will get data upon which investment decisions may favor in-country potato markets rather than importing the potatoes.
- V. Compliance with the regulations will not only ensure increased food security but will ensure better quality which in turn will leverage better health for the farmers and communities at large.

#### **4.4 Quantification of the Benefit**

Regulations generate costs and benefits at the business level. Operating and administrative costs can be evaluated through direct accountancy methods, micro econometric (cost function, binary logistic regression equation), and equilibrium models. Benefits that accrue to individual ventures, firms and plants, like improvements in shelf life, access to new markets such as export markets and retention of customers, are difficult to estimate quantitatively. At this initial stage it may not be possible or even feasible to quantify the benefits. However, after a period of implementation it should be possible to do so. Benefits will accrue directly to farmers, communities, other value chain actors as well as county and national governments.

#### **4.5 Distribution of Impacts**

- i. Human health and environmental impacts

None of the options has a significant impact on the environment. However, through education on best practices, the proposed regulations may have positive impacts on the environmental performance of the industry on safe use of chemicals.

ii. Impacts on consumers and competition

Most of the potatoes produced in the country are sold locally yet there is a huge demand for processing type potato, and a deficit means importation. Inefficient local production would mean locally produced potatoes are more expensive to processors than imported produce. Any decrease in operating costs through the increased efficiency should allow processing companies to maximise on local resources and ultimately lead to benefits for customers and the economy.

iii. Impacts on the rights of citizens.

There is no impact upon the rights of citizens in general. Option two will have a positive impact as food security is guaranteed.

## **5.0 Reasons why other Regulatory Options are not appropriate**

### **5.1 Option 1: Maintaining the Status Quo**

Maintaining the status-quo will only sustain the challenges facing Irish Potatoes sub-sector and allow further decline in this sub-sector, including the following:

- I. Continued traditional farming and neglecting of Irish potato sector players;
- II. Limited access to certified potato seeds for crop establishment and renewal.;
- III. The private sector stakeholders have continued to face an unconducive environment to enable them effectively participate on improving the sector, leaving the sub-sector to cartels who heavily exploit the farmers, demotivating them to improve production

### **5.2. Other Practical Options**

The other practical options set out in **section 3.3** above were weighed against the need to pass the proposed regulations. Therefore, considering the cost benefit analysis; the economic, environmental and social costs; administration and compliance costs; assessment of the return on investment; and quantification of the benefit of the proposed regulations, it is concluded that the Irish Potato regulations should be passed and operationalized whereas the other practical options identified herein can complement the regulations where no operational conflicts are apparent.

## **6.0 Conclusion**

The sum assessment of the impacts of the proposed regulations makes a compelling case for passing and implementation of the regulations. The proposed regulations bear much promise in streamlining production, trade and problematic interactions among key players in the Irish Potato sub-sector.

## **7.0 Recommendations**

The regulatory impact assessment recommends the passing and operationalization of the proposed Crops (Irish Potato) Regulations, 2018.